IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 31836 of 2005(M)

AGAINST THE ORDER IN IA.313/05 & 386/05 IN OS.85/1994 of MUNSIFF COURT, PAYYOLI

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PETITIONERS:

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1. MANIKKOTH M.LAKSHMI, D/O.CHATHAN,
   RESIDING AT KIZHAKKE PARAMBATH, VILLIAPPALLY
   AMSOM, DESOM, VADAKARA TALUK, KOZHIKODE DISTRICT.

2. MANIKKOTH M.CCHETHAN, S/O.CHOYI,
   RESIDING AT AYYANAVAYAL KUNIYIL,
   THIRUVALLUR AMSOM, DESOM, VADAKARA TALUK,
   KOZHIKODE DISTRICT.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:

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1. MANIKKOTH M.SARADA, D/O.CHATHAN,
   RESIDING AT JAWALAGIRI COLONY NO.125 C,
   AMBALAMUKAL, ERNAKULAM.

2. MANIKKOTH M.JANU, D/O.CHATHAN,
   RESIDING AT AYYANIKKATTUVEETTIL,
   POST.PANTHEERAMKAVU, KOZHIKODE-19.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF AFFIDAVIT IN SUPPORT OF PETITION, IA 313/2005 IN FDIA.678/98 IN OS.85/94 ON THE FILE OF THE MUNSIFF, PAYYOLI, FILED BY THE WRIT PETITIONERS.

EXT.P2 : TRUE COPY OF COUNTER STATEMENT FILED BY THE RESPONDENTS IN THE ABOVE PETITION.

EXT.P3 : TRUE COPY OF AFFIDAVIT IN SUPPORT OF PETITION, IA.386/2005 FILED BY THE RESPONDENTS IN THE WRIT PETITION, IN THE ABOVE FINAL DECREE PROCEEDINGS.

EXT.P4 : TRUE COPY OF COUNTER STATEMENT FILED BY THE RESPONDENTS IN THE WRIT PETITION IN THE ABOVE IA.386/05.

EXT.P5 : TRUE COPY OF ORDER OF THE MUNSIFF, PAYYOLI IN IA NOS. 313/05 AND 386/05 IN FDIA,678/98 IN OS.85/94 DT.26.07.05.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31836 OF 2005

Dated this the 13th day of July, 2007

JUDGMENT

It is a very detailed order which has been issued by the learned Munsiff accepting the first report filed by the advocate commissioner and preferring the same to the 2nd report filed by the commissioner on the basis of order of remittance by the court in IA No.109/89, I am not prepared to say that the process of reasoning of the learned Munsiff is unsound. But at the same time the fact remains that a decision has been taken by the learned Munsiff solely on the basis of the affidavits submitted by parties. The matter required enquiry. The properties which are mentioned as C & D plots in the second report of the advocate commissioner are the properties in question. As regards the D plot, a person by name 'Nanu' who is not a party to the suit, lodge claim on the basis of a particular title document. The commissioner perused the title document and found that the said property is not covered by the document produced by Nanu. The court also virtually accepts the report that Nanu does not have title over the D plot. Nevertheless the court takes that view that just because Sri.Nanu does not have title over D plot, it cannot be assumed that D property is partible. The decision regarding C plot is different. C plot is described

by the advocate commissioner in the second report as Peedika sthalam. Significantly nobody lodged any claim before the commissioner regarding this peedika sthalam which I gather is the site of shop room. Nothing is stated in the commissioner's report or in the impugned order as to who is having possession and control over the c plot. The possibility of at least the D plot being a part of the properties available for partition cannot be ruled out. It was not proper on the part of the learned Munsiff to have passed the impugned order without any enquiry regarding the acceptability of the commissioner's reports. The learned Munsiff will permit both the parties to cross examine the advocate commissioner and to adduce whatever other evidence they would like to adduce to substantiate the claim regarding the partibility of C & D plots. The court below will implead Sri.Nanu as an additional party in the final decree application and issue notice to him also before fresh orders are passed.

PIUS C. KURIAKOSE, JUDGE

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